Fair Labor Standards ~ 7 Criteria

Where ALL of the following seven criteria are met, the U.S. Department of Labor will NOT assert an employment relationship for purposes of the FLSA. These seven criteria pertain to Community-Based Vocational Training.

1. Participants will be youth with physical and/or mental disabilities for whom competitive employment, at or above the minimum wage level, is not immediately obtainable and who, because of their disability, will need intensive on-going support to perform in a work setting
2. Participation will be for vocational exploration, assessment, or training in a community-based placement worksite under the general supervision of public school personnel.
3. Community-based vocational training placements will be clearly defined components of individual education programs developed and designed for the benefit of each student. The transition services established for the exploration, assessment, training, or work-based learning components will be included in the student’s Individualized Education Program (IEP).
4. The student and the parent or guardian of each student must be fully informed of the IEP and the CBVT component and have indicated voluntary participation with the understanding that participation in such a component does not entitle the student participant to wages.
5. The activities of the students at the CBVT site do not result in an immediate advantage to the business. The Department of Labor will look at several factors:

* There has been no displacement of employees, vacant positions have not been filled, employees have not been relieved of assigned duties, and the students are not performing services that, although not ordinarily performed by employees, clearly benefit the business.
* The students are under continued and direct supervision by either representatives of the school or by employees of the business.
* Such placements are made according to the requirements of the student’s IEP and not to meet the labor needs of the business.
* The periods of time spent by the students at any one site or in any clearly distinguishable job classification are specifically limited by the IEP.

1. While the existence of an employment relationship will not be determined exclusively on the basis of the number of hours, as a general rule, each component will not exceed the following limitation during any one school year:

* Vocational exploration-----5 hours per job experienced
* Vocational assessment---90 hours per job experienced
* Vocational training---------120 hours per job experienced

1. Students are not entitled to employment at the business at the conclusion of their IEP. However, once a student has become an employee, the student cannot again be considered a trainee in that particular placement